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## Senate Aging & Youth Committee

Senator Bob Mensch

Chairman

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### Summary of House Bill 433, P.N. 2008

Prime Sponsor: Rep. Aument

#### A. Synopsis:

Amends the Child Protective Services Law (Title 23, Chapter 63) to provide for notification of the results of a child abuse investigation, outlines the procedural process to expunge or amend indicated and founded reports of child abuse, clarifies the investigation process, and addresses child victims/witnesses.

#### B. Bill Summary:

The bill does the following:

- **Disposition of founded and indicated reports.** – When a report of suspected child abuse is determined by a county agency, notification is to be made pursuant to section 6368(c.2) (relating to investigation of reports).
- **Amendment and expungement of indicated and founded reports.** -- A person named as a perpetrator in an indicated report may request that the Secretary amend or expunge the report, and a determination must be made within 90 days. DPW can consider any relevant factor.

If the Secretary refuses the request, the person may appeal to the Court of Common Pleas in the county where the abuse occurred, and the court can order DPW to amend or expunge the record.

The person appealing will have a right to a hearing, which will proceed within the following timeframes:

- Within 30 days from the receipt of the appeal, DPW will schedule a hearing on the merits of the appeal.
- Proceedings before the Bureau of Hearings and Appeals will commence within 45 days of the entry of the scheduling order, unless good cause is shown. All hearings must commence within 90 days of the scheduling order.
- The hearing will be concluded not later than 30 days from commencement.

- The hearing decision will be entered, filed and served to parties within 45 days of the conclusion of the hearing. Except, this may be extended to 60 days, if good cause is shown for the extension.

The investigative agency will bear the burden of proving by clear and convincing evidence that the report should remain categorized as an indicated report.

In an indicated or founded report of child abuse, a person can request that a report be amended or expunged from the child abuse registry for 'good cause,' which is defined in the bill as newly discovered clear and convincing evidence that the report is inaccurate or a determination that the perpetrator no longer represents a significant risk to children, which means that the perpetrator did not cause serious bodily injury or sexual abuse or exploitation of a child; at least five years has passed since they were named a perpetrator; the person is not identified as the perpetrator in any other cases; and the person would not be prohibited from employment involving children.

For a founded report, other than a founded report based on a criminal conviction, a person may petition the court that determined the report to be founded to order DPW to amend or expunge the report.

Parties to an appeal hearing will have 15 days from the mailing date of the final order of the Bureau of Hearings and Appeals to request the DPW Secretary to reconsider the decision or to appeal to Commonwealth Court. Parties will have 30 days from the mailing date to perfect an appeal to Commonwealth Court, and a filing for reconsideration will not toll the 30 days.

Notice of the decision will be made to the central register (DPW's child abuse registry), the appropriate county children and youth agency, any appropriate law enforcement officials and all subjects of the report.

- **Investigation of reports.** -- A child abuse investigation must include interviews with all the subjects of the report, including the alleged perpetrator. If a subject cannot be interviewed, reasonable efforts to interview the subject and the reasons for the inability to do so must be documented.

An indicated report of child abuse must be approved by the county children and youth administrator (or a designee) and the agency's solicitor.

Notice of the results of a child abuse investigation with information about the right to appeal must be sent to all subjects of a report within 24 business hours of the Department of Public Welfare's (DPW) receipt of the results of an investigation from a county agency. The county agency is required to notify DPW immediately upon the conclusion of an investigation.

- **Child victims and witnesses.** -- A child victim or witness at an administrative appeal hearing or other child abuse proceeding will be given any consideration that the child would receive in a criminal or civil proceeding.

Effective in 120 days.

### **C. Analysis of Amendment #A04821 to House Bill 433, P.N. 2008**

#### **Amendment Sponsor:**

This amendment is the result of meetings with the House, Governor's staff, the Department of Public Welfare, the Juvenile Court Judges' Commission and the Pennsylvania Commission on Crime and Delinquency. The amendment will bring HB 433 into line with provisions contained in SB 30 (Erickson) and SB 1116 (Washington), which originally passed the Aging and Youth Committee unanimously earlier this session.

The amendment makes substantive and technical changes, clarifying both existing language and some previously unaddressed issues. The amendment does the following:

- Clarifies instances of “good cause” as, but not limited to, newly discovered evidence that the report is being maintained in a manner inconsistent with the chapter or determination the perpetrator no longer represents a risk of child abuse and no significant purpose would be served by keeping the perpetrator in the statewide database.
- Clarifies that the department offers both an administrative review process and a more formal hearing process for perpetrators of indicated reports that seek expungement. Under the amendment, any individual with an indicated report may, within 90 days of receiving notice of the report, request an administrative review or appeal and/or request a hearing before the Secretary. The request shall be in writing in a manner prescribed by DPW.
- Gives the Secretary 60 days to make a determination to amend or expunge a record under good cause or an administrative review.
- Allows for a right to an appeal and request a hearing of a determination of good cause or administrative review by the secretary.
- Allows for an appeal to the court – which made the judicial adjudication of a founded report of child abuse – to amend or expunge the record in the statewide database. The department would have 15 days to comply with a judicial determination, if one is made.
- Requires indicated reports to be signed by the county administrator or designee and county solicitor, when the county agency is investigating; or the Secretary or designee and legal counsel, when the department is investigating.
- Provides a notice to the mandated reporter of the final outcome of the investigation.
- Requires a county agency to provide the final status of a report to the department within three business days of completion of the investigation.
- Makes substantial evidence the standard for indicating reports of suspected child abuse by the county agencies.
- Adds language regarding mailing of notices, including a presumption that the notice was received as long as it was not returned by the post office.

The effective date is amended to December 31, 2014.